STATE OF MICHIGAN

COURT OF APPEALS

ANDREW JON THOMPSON, Plaintiff-Appellant,	UNPUBLISHED February 28, 2012
v	No. 301720 Grand Traverse Circuit Court Family Division
HEIDI JANE THOMPSON, Defendant-Appellee.	LC No. 2005-002851-DC

Before: HOEKSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's October 13, 2010 order awarding defendant sanctions in the form of attorney fees and costs for time spent defending two motions that the trial court deemed frivolous. For the reasons set forth in this opinion, we vacate the circuit court's order and remand for further proceedings.

The parties were divorced pursuant to a judgment entered in the state of Georgia in June 2004. The parties were granted joint legal custody of their three minor children, with defendant having primary physical custody. The judgment contains two parenting time schedules, one to be exercised if the parties were living within 100 miles of each other, and one to be exercised if defendant relocated more than 100 miles from plaintiff. Following plaintiff and defendant's move to Traverse City, Michigan, plaintiff registered this judgment and transferred jurisdiction to Grand Traverse Circuit Court.

Plaintiff filed a motion to amend parenting time on March 14, 2008. In anticipation of a move to Indiana, plaintiff wanted to maintain the parenting time schedule then in effect, not the schedule specified for when defendant relocated 100 miles away. Defendant moved for summary disposition, and the matter was referred to the family court referee for hearing. The hearing referee found no change in circumstances to warrant hearing plaintiff's motion. She further found that it would not be a change of circumstances even if plaintiff did move to Indiana, because the divorce judgment provided the alternate parenting time schedule. The hearing referee also found that sanctions were appropriate, and recommended granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8).

Plaintiff filed a timely, written objection to the recommendation, and on August 13, 2008, the circuit court held a de novo review hearing pursuant to MCR 3.215. At the conclusion of the

hearing, the circuit court adopted the referee's decision, granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(8), and reserved the issue of sanctions pending a motion from either party. An order consistent with the court's rulings was entered August 20, 2008. Defendant thereafter filed a motion for sanctions, but the hearing on this motion was adjourned when plaintiff filed a motion for disqualification.

On October 5, 2008, plaintiff moved to Indianapolis, and on October 15, 2009 he filed a motion to modify parenting time due to his relocation. Defendant moved to dismiss and for summary disposition under MCR 2.116(C)(8), and the motions were referred to the family court referee. In a recommendation and order dated December 15, 2009, the referee found that plaintiff had failed to show that it would not be in the children's best interests for the parties to follow the alternate parenting time schedule. Although the referee found the move to Indiana to be a change of circumstances, she found that it was not a change that would justify the court's reconsideration of the best-interest factors, and she recommended that summary disposition be granted.

Plaintiff filed a timely, written objection to the recommendation, and the circuit court held a de novo review hearing pursuant to MCR 3.215. At the conclusion of the hearing, the court issued its decision from the bench. The court affirmed the referee's December 15, 2009 recommendation and order and found that plaintiff's October 15, 2009 motion was frivolous. The trial court recognized that plaintiff's move to Indiana was a change of circumstances, but concluded that the change did not merit modification of parenting time because the situation was already contemplated in the judgment of divorce. It stated that it would reserve the issue of sanctions, and an order consistent with the court's rulings was entered June 8, 2010. That order indicated that the March 14, 2008 and October 15, 2009 motions were frivolous pursuant to MCR 2.114, 2.625 and MCL 600.2591.

On June 16, 2010 defendant requested sanctions of $11,033.80 for litigation costs and expenses incurred for responding to the second motion. Defendant also requested $1,724.90 in sanctions for responding to the first motion. A hearing was held, and in regard to the first motion, the trial court stated as follows:

> As the Court had previously indicated, the defendant is requesting $1724.90 for three months of legal work. The Court does find that those costs listed are reasonable, and bill of costs is for a frivolous claim filed by the plaintiff when he was requesting a change in parenting time based on a possible move to Indiana to seek employment, and the judgement [sic] of divorce had already included parenting time, a parenting time scenario for situations where the plaintiff resided more than 100 miles away.

Regarding the $11,033.80, the trial court stated only that it "is the Court's intention to sign the bill of costs." An order consistent with the court's rulings, awarding $1,724.90 and $11,033.80 for each respective motion, was entered. It is from this order the plaintiff now appeals.

This Court reviews for an abuse of discretion a trial court's decision to award attorney fees as sanctions. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). This Court

reviews for clear error a trial court's finding that an action is frivolous. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002).

A court may award sanctions, in the form of attorney fees and costs, to a prevailing party if an action or defense is frivolous. *Keinz v Keinz*, 290 Mich App 137, 141; 799 NW2d 576 (2010). An action or defense is frivolous if: (1) the party's primary purpose in initiating the action was to harass, embarrass, or injure the prevailing party; (2) the party had no reasonable basis to believe that the facts underlying that party's legal position were true; or (3) the party's legal position was devoid of arguable legal merit. *Id.*, citing MCL 600.2591(1).

As previously indicated, MCL 600.2591(1) grants the trial court authority to award sanctions in the form of attorney fees and costs to a prevailing party if the action is deemed frivolous. *Keinz*, 290 Mich App at 141. However, the trial court must make specific findings to support its conclusion. In the absence of such findings, this Court has no factual findings from which we can determine if the trial court (1) committed clear error in finding that the action was frivolous, and (2) whether the trial court abused its discretion in awarding attorney fees as sanctions. In this case, though the trial court concluded that the two motions were frivolous, we are unable to ascertain the basis on which the trial court premised this conclusion.[1] Merely concluding that the actions were frivolous was not sufficient to inform plaintiff or this Court of the basis for the court's decision, or to facilitate this Court's review. MCR 2.517(A)(2). See, also, *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176-177; 530 NW2d 772 (1995). As such, the trial court's failure to make specific findings as to why plaintiff's actions were frivolous constituted clear legal error.

Having found that the trial court erred by not stating its basis for its conclusion that plaintiff's motions were frivolous, we need not address the remainder of defendant's arguments relative to the amount of sanctions awarded. As to defendant's contention that the manner in which the trial court conducted these proceedings violated his right to due process, we have already found that the trial court erred by failing to provide plaintiff with a basis for its conclusion that plaintiff's motions were frivolous. As to all other accusations plaintiff raises against the trial court, we find them unsupported by the record and not worthy of further discussion.

[1] Even assuming that the trial court based its award on a finding that the initial motion was frivolous because such a move was already contemplated in the judgment of divorce and an alternate parenting time was included, such an order may still be erroneous because the judgment has no provision for the father relocating a distance greater than 100 miles from the mother. It only has a provision for the mother's initial move, hence it may have been reasonable to conclude that the provision is not controlling in the instant situation. However, we note that this same logic may not apply to the second motion because it was based on an argument already ruled meritless and in effect at the time of the filing of the second motion.

We vacate the trial court's order awarding sanctions and remand for further proceedings. We do not retain jurisdiction. Neither party having prevailed in full, no costs are awarded. MCR 7.219.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello